United South and Eastern Tribes, Inc.
711 Stewarts Ferry Pike
Suite 100
Nashville, TN 37214
(615) 872-7900

WRITTEN TESTIMONY OF KELLER GEORGE
PRESIDENT OF THE UNITED SOUTH AND EASTERN TRIBES
ASSISTANT TO THE NATION REPRESENTATIVE, ONEIDA INDIAN NATION
CHAIRMAN OF THE ONEIDA INDIAN GAMING COMMISSION

Before the

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
1334 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC
APRIL 17, 2002

Mr. Chairman, Congressman Rahall, Members of the Committee, my name is Keller George. I am President of the United South and Eastern Tribes ("USET"), which is a confederation of 24 Indian nations ranging from Florida to Maine, South Carolina to Texas. In addition to being President of USET, I am an enrolled member of the Oneida Indian Nation in New York, where I serve as Special Assistant to the Nation Representative. I am also Chairman of the Oneida Indian Gaming Commission, the principal regulatory body that supervises gaming at Turning Stone Casino and Resort, an enterprise of the Oneida Indian Nation.

Thank you for this opportunity to appear before the Committee on Resources to present our view on the increasingly controversial matter of adding "unionization" clauses to tribal-state gaming compacts.

Included among the members of USET are some of the largest gaming tribes in the United States, such as the Mashantucket Pequots, the Mohegan Tribe, the Oneida Indian Nation, the Mississippi Band of Choctaw, the Seminole Tribe, and the Miccosoukee Tribe.

In fact, of the 24 Indian nations that comprise USET, 15 engage in Indian gaming pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA" or "the Act"). Nine tribes conduct Class III gaming pursuant to a tribal-state compact, and six tribes engage in Class II gaming. To the best of my knowledge, none of these gaming facilities has a unionized workforce.

Let me make it clear that the purpose of my testimony is not to oppose unions. I have nothing against unions. I think most reasonable people would agree—no matter which side of the political spectrum they represent—that unions have been responsible for many very positive developments in the workplace. They have championed the fundamental rights of employees to a safe place to work. They have advocated on behalf of employees for reasonable wages and decent benefits. The have successfully argued in support of reasonable shifts and for time off to spend away from the workplace. In fact, I recently heard on the radio an advertisement by a labor union, which said: "This ad was paid for by the people who brought you the weekend." So, let me just say on a personal note to the union representatives here: "Thank you for that!"

In addition, at the Oneida Nation, when we begin a new business development project, we accept bids from any company regardless of whether it is a union shop. And, the bid we approve is based solely on the merits of the application. I should also mention that quite a few enrolled Oneida men and women are proud, card-carrying members of labor unions. We have Oneida members that are carpenters, ironworkers, and other trades that have significant union representation.

Just as the purpose of my testimony is not to oppose unions, I am not here to endorse them either. In fact, I believe that this issue should have nothing to do with whether you support or oppose organized labor.

The reason that I agreed to testify is that I believe that Congressman Hayworth's bill, H.R. 103, the "Tribal Sovereignty Protection Act," raises some important issues and questions that deserve Congress' attention.

As the committee is aware, a controversy has developed over so-called "unionization agreements," which would be included as part of tribal-state gaming compacts. In California, it has been asserted that tribes were pressured into signing labor agreements before they could execute gaming compacts with the governor. In other cases, like New York, the legislature has passed a law that would include several "unionization clauses" to be made a part of any future compact.

My concern is that some states are using the process set up by the Indian Gaming Regulatory Act to undermine federal labor policy as endorsed by Congress under a different federal statute — the National Labor Relations Act ("NLRA"). In other words, one federal statute is being used to overturn a different one in a way that Congress did not intend. Let me explain.

I am not a labor lawyer; however, my understanding is that in passing the National Labor Relations Act, Congress worked very hard to find a middle ground, protecting the rights of employees to determine whether they wish to join a labor union. Congress struck a delicate balance between the interests of unions conducting organizational campaigns and employers to oppose unions.

The National Labor Relations Act strikes just the right balance of allowing the unions and employers each a right to present their positions to the employees who must ultimately decide whether they want a union.

What the NLRA has accomplished, however, many states are now taking away. These states are using IGRA to circumvent the NLRA by imposing rules that tip the delicate labor-management balance strongly in favor of unions. These provisions deny employees of Indian-run casinos the right to a free

choice in deciding whether or not they want to joint a union. As a matter of federal policy, Congress already decided through the NLRA that employees should have that free choice. The states' use of IGRA to take away the employees' free choice should be illegal.

Here are some examples of what I am talking about. In New York, the legislature recently passed a law requiring that tribal-state gaming compacts include a provision that **Indian governments must remain neutral** during certain union organizational campaigns. I understand that a similar requirement was included in the California unionization agreements.

This provision means that Indian nations cannot educate their employees on issues relating to unionization. As a result, employees are forced to decide whether or not they want a union with only the union's version of the issue. This one-sided approach is not only unfair to employees; it is also contrary to the system established by Congress under the National Labor Relations Act.

The NLRA specifically includes a section protecting the right of employers to express their "views, argument, or opinion" in written, printed, graphic, or visual form. The law expressly states that the employer's presentation of its opinions to its employees does not constitute an unfair labor practice. Yet states like New York and California have single-handedly changed that law by making it a breach of the compact for Indian tribes to exercise their right under the National Labor Relations Act.

The New York law also undermines another fundamental concept of the NLRA—that elections take place by secret ballot. The reasons for a secret ballot are obvious. Congress recognized that employees should be free to cast a vote for or against unionization without fear of retaliation by either their employer or by the union.

My understanding is that the National Labor Relations Board has repeatedly stressed the importance of a secret ballot. The NLRB stated:

> "The Board is under a duty to preserve [the secret ballot] and it is a matter of public concern, rather than a personal privilege subject to waiver by the individual voter. Moreover, to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representative elections."

Despite the obvious importance of secret ballots, the New York legislation requires Indian-run casinos to recognize unions based merely upon a "card count," in which union organizers can pressure their peers and co-workers to sign union authorization cards. Under the New York law, once the union presents authorization cards from a majority of the employees in a bargaining unit, the Indian nation must recognize the union—even if the employees were coerced into signing the cards. This destroys the whole purpose of the secret ballot and is contrary to the intent of the NLRA to protect the free choice of employees in selecting a union.

I have been informed that in some instances, unions are able to collect authorization cards from a majority of employees in a bargaining unit, but during the election by secret ballot the employees reject the same union that collected cards. Why does this happen? Well, it could happen because union organizers pressured employees to sign the cards. Or, it could happen because employees thought that unionization was a good idea when they signed the card, but they changed their minds when they were able to hear the

employer's perspective.

Whatever the reason, it is no wonder that Congress felt that secret ballots and employer participation in campaigns were important tools to maintain the delicate balance between the rights of employers, employees, and the unions.

This issue also involves tribal sovereignty. Indian governments ought to be able to decide whether they want to accept unions in their government businesses. Again, this has nothing to do with being for or against unions. American Indians have a long and proud history of participation in trade unions. But an Indian government should have the right as a sovereign entity to decide whether it is in its best interest to allow unions into its workplaces.

As this committee well knows, Indian casinos are government businesses that by law must be used to support tribal government operations or programs; provide for the general welfare of the Indian tribe and its members; and promote tribal economic development. Indian gaming supports schools, health care, roads, affordable housing, insurance, law enforcement, and many other government activities. This is an essential distinction between Indian casinos and their private sector counterparts in Las Vegas and Atlantic City. Without this gaming revenue, many Indian governments would no longer be able to provide the essential services currently given to their members. Gaming revenues have allowed some Indian nations to end the centuries' old cycle of poverty and reliance on federal dollars.

Because this revenue is so essential to many Indian governments, I can understand why some Indian nations would decide that they cannot afford to allow unions to organize in their businesses. I can understand why some Indian nations would feel that the possibility of a strike or work stoppage would threaten their ability to provide essential government services. I can understand why some Indian nations feel that they cannot subject the welfare of their people to the threat of a labor dispute.

That is why I believe that whether you support unions or not, Indian nations ought to be left with making the choice for themselves. They ought not to be coerced into unionization. And, as I have mentioned, states should not be allowed to let the one federal statute undermine federal labor policy as decided by Congress under the National Labor Relations Act.

I appreciate that this Committee is holding this hearing to highlight and discuss this important and complicated issue. Thank you for the opportunity to participate in this hearing, and I would be glad to answer any questions from the Committee.